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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-196729

DATE: June 16, 1980

MATTER OF: Hotpack Corporation } Request for
Reconsideration }

DIGEST:

Prior GAO decision finding protest untimely noted that amendment issued only to two responding offerors considerably broadened field of competition by reducing definitive responsibility requirements. GAO stated that 19 nonresponding firms originally solicited might have responded with knowledge of change in responsibility requirements. However, we failed to consider limiting effect that solicitation's technical requirements had on extent of competition. Therefore contracting officer had reasonable basis for not canceling and resoliciting because of amendment. Prior decision dismissing protest is sustained except for statement that consideration should have been given to resolicitation under reduced responsibility requirements.

Hotpack Corporation (Hotpack) requests reconsideration of our decision in Hotpack Corporation, B-196729, April 2, 1980, 80-1 CPD 246, dismissing its protest concerning negotiated solicitation No. DADA15-79-R-0042 issued by the Department of the Army, Walter Reed Army Medical Center.

In that decision, we found Hotpack's contention that the Army showed bias and favoritism toward Mid-Atlantic Laboratory Equipment Co. (Mid-Atlantic), the only other offeror, in waiving original solicitation requirements through amendments 0002 and 0003 was untimely filed and not for consideration. Our prior decision also noted Hotpack's assertion that the Army should cancel the solicitation and reissue a new one so that other suppliers could have the opportunity to

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make an offer under the changed responsibility requirements. We found this basis of protest was also untimely.

Hotpack refers to the last paragraph of our decision wherein we stated:

"We do note, however, that amendment 0003, issued on October 5, 1979, after receipt of offers, considerably broadened the potential field of competition; yet it was not sent to any of the 21 companies originally solicited, except the two responding offerors. In view of the potential impact of this amendment, we believe consideration should have been given to cancellation, revision and reissuance of the solicitation to all 21 firms. See Defense Acquisition Regulation § 3-805.4(b) (1976). Nevertheless, we are not recommending any remedial action since award was made in October with installation to be completed within 100 calendar days."

Hotpack asserts that our statement that award was made in October is inaccurate. Consequently, Hotpack requests that the remedial action of cancellation and resolicitation, which we stated we would have recommended, should now be recommended.

The Army acknowledges that no award has been made. However, the Army questions our conclusion that amendment 0003 considerably broadened the field of competition. While the amendment may have removed whatever "responsibility" impediment Mid-Atlantic had, the Army contends that it had no effect on the fact that only two firms, Hotpack and Lunaire Environmental Incorporated, manufacture the particular type of environmental chamber required by the solicitation. Although there are many manufacturers of controlled environmental chambers, the Army points out that the others make them only with urethane or styrofoam walls, while the solicitation called for channeled fiberglass wall construction.

The Army has explained the impact the solicitation construction requirements had on the competition as follows. There were 18, rather than 21, vendors on the mailing list because three companies were listed twice.

Of these 18, four were distributors, three of which were distributors for manufacturers on the list. One of these three was a distributor for Hotpack. The fourth distributor was Mid-Atlantic. The Army further states that the remaining two distributors' manufacturers informed the contracting officer that they did not manufacture the kind of equipment called for by the solicitation. Hotpack's distributor did not compete apparently because it would install the Hotpack environmental chamber. With regard to the ten other manufacturers on the mailing list who did not submit an offer, the record shows the Army had replies either telephonically or by letter from at least six of them indicating that the only reason for not bidding was the requirement for channeled fiberglass construction.

Therefore, the Army argues that since any impact amendment 0003 could have had was limited to those who manufactured or distributed environmental chambers with channeled fiberglass walls, the contracting officer appropriately decided under DAR § 3-805.4(b) (1976 ed.) to send the amendment only to Hotpack and Mid-Atlantic, a distributor of Lunaire, rather than resolicit.

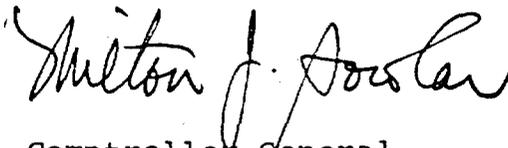
This Office has consistently held that the decision whether to cancel a solicitation and resolicit is a matter for the sound judgment and discretion of responsible agency officials and is subject to review by our Office only if it is clearly shown to be without a reasonable basis. Environmental Protection Agency-Request for Modification of GAO Recommendation, 55 Comp. Gen. 1281 (1976), 76-2 CPD 50. The record shows that the notice of the protested procurement was published in the Commerce Business Daily and the bidders' mailing list was made up of the four distributors and fourteen manufacturers who responded to the opportunity given in that notice to request a copy of the solicitation. The Army notes that the Commerce Business Daily notice did not contain a specific reference to the requirement that the environmental chamber be of channeled fiberglass construction. Therefore, it appears that most of the firms that did respond to the notice were unaware of the particular type of environmental chamber the Army desired. Nevertheless,

because of the general nature of the notice any and all manufacturers or distributors of environmental rooms would likely have wanted to be placed on the bidders' mailing list had they intended to participate in the procurement. The fact that 18 firms actually responded indicates to us that only those 18 firms within the industry actually intended to participate in the procurement.

In view of the foregoing and, in view of the Army's position regarding 18 firms on the bidders' mailing list which Hotpack does not rebut, we believe that the contracting officer had a reasonable basis to conclude that the impact of amendment 0003 did not warrant resolicitation. Further, no useful purpose would have been served for the contracting officer to have sent a copy of amendment 0003 to all the companies originally solicited.

In noting in our prior decision that amendment 0003 was not sent to all 21 firms originally solicited by the Army, we were concerned that a substantial number of firms which did not submit offers might have done so with knowledge of the reduction in the solicitation's definitive responsibility requirements. While that concern was valid from a theoretical standpoint, we failed to consider the practical limiting effect that the solicitation's technical requirements had on the competition. Accordingly, our prior decision is affirmed except that we withdraw the statement that amendment 0003 considerably broadened the field of competition and the decision's inference that a recommendation for remedial action would have been made but for the award.

The prior dismissal of the protest is sustained.



Acting Comptroller General
of the United States